IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

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| Applicant: | RAMAMOORTHY | Patent Application | |
| Application No.: | 10/723,643 | Group Art Unit: | 2454 |
| Filed: | November 24, 2003 | Examiner: | Patel, Chirag R. |

For: DYNAMICALLY BALANCING LOAD FOR SERVERS

# REPLY BRIEF

In response to the Examiner's Answer mailed on June 25, 2009, Appellant respectfully submits the following remarks.

## REMARKS

Appellant is submitting the following remarks in response to the Examiner's Answer. In these remarks, Appellant is addressing certain arguments presented in the Examiner's Answer. While only certain arguments are addressed in this Reply Brief, this should not be construed that Appellant agrees with the other arguments presented in the Examiner's Answer.

### Correction to Appeal Brief and Examiner's Answer

Appellants note that both the Appeal Brief and the Examiner's Answer refer to the asserted art U.S. Patent No. 6,523,026 as Hickman et al., hereinafter referred to as "Hickman." However, Appellants respectfully submit that both the Appeal Brief and the Examiner's Answer should refer to U.S. Patent No. 6,523,036 as Hickman, as indicated in the Notice of References Cited (PTO-892) included in the Office Action mailed June 9, 2008.

### Response to Response to Argument in Examiner's Answer

Appellants respectfully submit that "[i]t is improper to combine references where the references teach away from their combination" (emphasis added; MPEP 2145(X)(D)(2); *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983)). Appellants respectfully note that "[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention" (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)). Appellants respectfully submit that there is no motivation to combine the teachings of Kazemi and Hickman, because Kazemi teaches away from the suggested modification.

Appellant respectfully submits that Kazemi and Hickman do not render the claimed embodiments obvious. In particular, Appellant respectfully submits that Kazemi and Hickman, in combination, do not render unpatentable "monitoring for servers that are able to respond to requests directed at the system, including actively discovering new servers in said system of servers" (emphasis added) as recited in independent Claim 1, and the similar embodiments of independent Claims 8 and 14.

First, Appellant respectfully submits that Kazemi teaches away from "monitoring for servers that are able to respond to requests directed at the system, including actively discovering new servers in said system of servers" (emphasis added) as recited in independent Claim 1, and the similar embodiments of independent Claims 8 and 14.

As acknowledged in the Examiner's Answer, "Kazemi fails to disclose including actively discovering new servers in said system of servers" (Examiner's Answer; page 4, lines 1-2). Moreover, Appellant respectfully submits that Kazemi teaches away from such an embodiment.

Appellant respectfully notes that in order to render the claimed embodiment unpatentable, it would have to be obvious that "actively discovering new servers" is performed within any "monitoring for servers that are able to respond to requests directed at the system" as claimed.

In contrast, Appellant understands Kazemi to disclose the monitoring of known resources. As recited in Kazemi (emphasis added; col. 15, line 64, through col. 16, line 8):

> In general, as the DSR 120 operates, it monitors the amount of activity and usage of each of the servers to which it is connected. The monitored parameters of the servers 210 may include such information as the hit rate on that server, the

> network activity experienced by the server, the CPU utilization of the server, the memory utilization of the server, or such other parameters as are known in the art to related to the load placed upon the server 210. An overall load for each server may be calculated based upon these parameters. In addition, the amount of load generated by requests associated with each of the resources 320 handled by that server may be monitored.

Accordingly, Appellant understands Kazemi to disclose that only those "servers to which it is connected" are monitored. Therefore, Appellant respectfully submits that Kazemi teaches away from "monitoring for servers that are able to respond to requests directed at the system, including actively discovering new servers in said system of servers" (emphasis added) as recited in independent Claim 1, and the similar embodiments of independent Claims 8 and 14. In other words, Appellant respectfully submits that Kazemi teaches away from "actively discovering new servers" in the context of "monitoring for servers that are able to respond to requests directed at the system" as claimed.

Second, Appellant respectfully submits that there is no motivation to combine the teachings of Kazemi and Hickman, because Kazemi teaches away from the suggested modification. Appellant understands Hickman to disclose a "system architecture [that] enables database capacity to be scaled by adding resources, such as additional servers, without requiring that the system be taken offline" (col. 2, lines 51-53).

As presented above, Appellant respectfully submits that Kazemi teaches away from "monitoring for servers that are able to respond to requests directed at the system, including actively discovering new servers in said system of servers" (emphasis added) as recited in independent Claim 1, and the similar embodiments of independent Claims 8 and 14. By disclosing that only those "servers to which it is connected" are monitored, Appellant

respectfully submits that Kazemi teaches away from the suggested modification and combination with Hickman.

## CONCLUSION

In view of the above remarks, Appellant continues to assert that pending Claims 1-20 are patentable over the asserted art as the rejection under 35 U.S.C. §103(a) does not satisfy the requirements of a *prima facie* case of obviousness, for reasons presented above and for reasons previously presented in the Appeal Brief.

Respectfully submitted,

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Dated: 08/24/2009

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